The disseisee, however, is not left without remedy for the injuries to the premises during disseisin. In certain jurisdictions he can recover damages in ejectment; or, having re-entered, he may bring trespass *quare clausum* or an action for mesne profits. See 85 Am. Dec. 321, note. For after re-entry the seisin by a fictitious relation is regarded as having been continuously in the real owner. 3 BL. COM. 210. This fiction once granted, there seems no reason why the disseisee should not take advantage of it in trover or replevin, as well as in trespass for mesne profits. Some courts allow it. See *Alliance Co.* v. *Nettleton Co.*, 74 Miss. 585; *Wilson* v. *Hoffman*, 93 Mich. 72. Others limit the disseisee to his action for mesne profits, denying that the disseisor's title to the chattel is divested by a recovery of the land. See *Brothers* v. *Hurdle*, 10 Ired. (N. C.) 490; *Page* v. *Fowler*, 39 Cal. 412. So where the disseisee has obtained possession of the logs, the disseisor may maintain replevin. *Lehman* v. *Kellerman*, 65 Pa. St. 489; *Busch* v. *Nester*, 70 Mich. 525, *contra*. Another conflict of cases arises concerning recovery against a purchaser from the disseisor. A strong current of authority allows trespass for mesne profits even against a purchaser for value in good faith. *Trubee* v. *Miller*, 48 Conn. 347. Apparently, therefore, trover might be brought. See *Alliance Co.* v. *Nettleton Co.*, *supra*. Courts which regard the disseisor as acquiring an indefeasible title to the severed realty are necessarily *contra*. *Faulcon* v. *Johnston*, 102 N. C. 264. Were it possible to remould the law various changes might be suggested. This artificial doctrine of disseisin however, harsh as it may be in particular instances, seems too firmly established to be modified otherwise than by legislation.

INTENT AS AFFECTED BY DRUNKENNESS. — It is to be regretted that the law with regard to civil suits in which the question of drunkenness arises has been left in a form far more indefinite than that of the criminal law. In the latter branch of the law the rule is well established that intoxication, though no defence, may be given in evidence to show the lack of specific intent. Though the general trend of civil decisions is in accord with this doctrine, that an act of a drunkard is still his voluntary act, there are several cases which tend to obliterate the distinction. In a recent suit on an insurance policy, under which the insurer was relieved of liability for intentional injuries, the insured had his thumb bitten by a drunken man. Although the court held that the facts showed an intentional injury, it was indicated that one may become so intoxicated as to be incapable of having an intention. *Northwestern Benevolent Society* v. *Dudley*, 61 N. E. Rep. 207. Opposed to this *dictum* is a decision in a slander suit where evidence of the defendant's drunkenness was held inadmissible. *Mix* v. *McCoy*, 22 Mo. Ap. 488. The latter case is undoubtedly the sound one, as the offence — voluntarily uttering the words — was committed irrespective of malice or of any particular state of mind. The distinction accepted by the criminal law, that a drunkard's act, though voluntary, may be unaccompanied by any particular state of mind, seems now to be gradually being adopted in both tort and contract cases. According to the text writers, both at law and in equity to-day a contract made by one utterly deprived of the use of his reason by drunkenness or otherwise is generally considered void, either on grounds of policy, MARKBY, ELEMENTS OF LAW, 5th ed., § 754; or

because there can be no deliberate intention to assent. STORY, EQ. JURIS., § 231 ; BISHOP, NON-CONTRACT LAW, § 513 ; POTHIER, TRAITÉ DES OBLIGAT., § 49. The modern English cases are in accord with this view. *Pitt* v. *Smith*, 3 Camp. 33 ; *Gore* v. *Gibson*, 13 M. & W. 623. But Pollock, C. B., in a later case has intimated that under no conditions is the contract absolutely void. *Matthews* v. *Baxter*, L. R. 8 Ex. 132. This shows a tendency to revive the harsher early English doctrines. 4 BL. COM. 26. In the United States, although the authorities are in hopeless conflict, the general tendency is to consider the contract as void. This view seems correct on principle, as there can be no contract if one party, through drunkenness or any other cause, is incapable of giving assent.

In equity, and now at common law since the introduction of equitable defences, contracts made while merely under the influence of liquor are voidable, but only if the other party has obtained an unfair advantage or has purposely caused the intoxication. *Cooke* v. *Clayworth*, 18 Ves. 12 ; *Crane* v. *Conklin*, 1 N. J. Eq. 346. With regard to testamentary capacity a sound doctrine has been established. Intoxication at the time of making a will does not invalidate it if the testator comprehended the nature of the act. *Bannister* v. *Jackson*, 45 N. J. Eq. 702 ; *Key* v. *Holloway*, 7 Baxter (Tenn.) 575. Where a testator destroys his will, either while suffering from delirium tremens or when merely under the influence of liquor it is held to be not revoked. *Brunt* v. *Brunt*, L. R. 3 P. & D. 37 ; *In the Goods of George Brassington, deceased*, 18 T. L. Rep. 15. These decisions are clearly correct as a valid revocation requires an *animus revocandi*.

It seems impossible, after a review of the authorities to deduce any broad principle with which all the cases where the effect of intoxication upon intent is in issue may be reconciled. The true rule in contracts and torts as well as in criminal law seems to be that if a specific intent or a special state of mind is necessary for liability, evidence of drunkenness is admissible to negative it, otherwise not. The *dictum* in the principal case is too sweeping, apparently recognizing no distinction between an act intentionally, that is voluntarily done, and an act done with specific intent, that is an intention ulterior to the mere moving of the muscles.

RECENT CASES.

ADMIRALTY — GENERAL AVERAGE — CONTRIBUTING INTERESTS. — A vessel was chartered to proceed to a foreign port and there take on a cargo, freight to be payable on the completion of the voyage home. On the voyage out in ballast, the vessel grounded, and a general average sacrifice was made. The voyage was subsequently completed and the freight due under the charter paid. *Held*, that the freight is liable to contribute to the general average sacrifice. *Steamship Carisbrook Co.* v. *London, etc., Ins. Co.*, [1901] 2 K. B. 861.

Though freight for the voyage on which a general average sacrifice is made, is liable to contribute, there is very little authority on the question of the liability of the homeward freight, already contracted for, to contribute to a general sacrifice on the outard voyage. One case has been found in England, and one in the United States, holding that where freight is a gross sum for the round voyage, the whole freight must contribute to a general average sacrifice on the outward voyage. *Williams* v.